



**STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE**

Agency Term Contract Multi-Year - Issued to:

Perfoma Software USA Inc
One Research Ct Ste 450
Rockville MD 20850

Vendor ID: 0000183491

CONTRACT NUMBER: 0000000000000000000064597

TITLE: 31701-11237 -Perfoma Software – Bears Budget

START DATE: December 08, 2019

END DATE: December 07, 2022

Contract Contact Information:

State of Tennessee
Department of General Services, Central Procurement Office
Contract Administrator: Tami Jefferson
18th Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102
Phone: 615-741-6096

Line Information

Line 1

Item ID:

Support and Maintenance - Year 1

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 138,403

Line 2

Item ID:

Support and Maintenance - Year 2

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 141,863

Line 3

Item ID:

Support and Maintenance - Year 3

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 145,410

Line 4

Item ID:

Unlimited User Licensing Fee - Year 1

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 225,000

Line 5

Item ID:

Unlimited User Licensing Fee - Year 2

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 230,625

Line 6

Item ID:

Unlimited User Licensing Fee - Year 3

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 236,390

Line 7

Item ID:

Project Manager / Solution Architect - Years 1 - 5

Unit of Measure: HR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 173.25

Line 8

Item ID:

Senior Designer - Years 1 - 5

Unit of Measure: HR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 152.25

Line 9

Item ID:

Senior Developer / Analyst - Years 1 -5

Unit of Measure: HR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 147.00

Line 10

Item ID:

Developer / Analyst - Years 1 -5

Unit of Measure: HR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 126.00

Line 11

Item ID:

Developer - Years 1 - 5

Unit of Measure: HR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 120.75

Line 12

Item ID:

Documentation and Support - Years 1 - 5

Unit of Measure: HR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 105.00

Line 13

Item ID:

Support and Maintenance - Optional Year 4

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 149,045

Line 14

Item ID:

Support and Maintenance - Optional Year 5

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 152,771

Line 15

Item ID:

Unlimited User Licensing Fee - Optional Year 4

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 242,299

Line 16

Item ID:

Unlimited User Licensing Fee - Optional Year 5

Unit of Measure: YR

Vendor Item/Part #:

Manufacturer Item #:

Unit Price: \$ 248,356

APPROVED: _____ BY: _____
CHIEF PROCUREMENT OFFICER PURCHASING AGENT DATE



Invitation to Bid (ITB)
For Budget System Support for Finance & Administration
Event # 31701-11237

- 1.1. Section 1 -- Background Information
- 1.2. This contract is for consulting and maintenance services for the State's Budget Entry, Analysis, and Reporting Systems (BEARS). This Contract is used by all Agencies, and currently maintained by the Department of Finance and Administration. This system is critical for the budgetary process.
- 1.3. **Accommodation for People with Disabilities.** Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.
- 1.4. **Responses Due.** The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.
- 1.5. Award Criteria
- 1.6. **Single Award -- Lowest Cost.** A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.
- 1.7. Standard Terms of the Solicitation
- 1.8. **Respondent Registration.** Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST

- 1.9. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.
- 1.10. **Quality of Workmanship and Materials.** Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.
- 1.11. **Performance.** The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.
- 1.12. **Clarifications.** The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.
- 1.13. **Negotiations.** The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.
- 1.14. **Response Cancellation and Rejection.** The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except

pursuant to target pricing or best and final offer negotiations as specified in this ITB.

- 1.15. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Sharon Pope
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102
615-741-9588
Sharon.pope@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--godbe-general-contacts.html> for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102
615-741-1035
Helen.Crowley@tn.gov

- 1.16. **Responses Submitted by Mail.** If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

- 1.17. **Models Included in Response.** All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.
- 1.18. **Respondent Certification.** By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.
- 1.19. **Exceptions or New Terms or Conditions.** Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.
- 1.20. **Conflict of Interest.** The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:
- a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 1.21. **Specifications Govern.** Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.
- 1.22. **Firm Offer.** The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.
- 1.23. **F.O.B. Destination.** Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.
- 1.24. **Tax Exemption.** The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful

respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.

- 1.25. **Prompt Pay Discount.** Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.
- 1.26. **Fixed Discount or Surcharge.** The percent discount or surcharge per line item must be fixed for the contract's term.
- 1.27. **On-site Inspection.** All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.
- 1.28. **Used Equipment.** When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.
- 1.29. **Energy Star Products.** Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.
- 1.30. **Response Requested for Software Products.** Unit prices are requested for software products that meet the State's requirements. Alternative software products will not be accepted and, if included, may result in rejection of the response. Respondent must submit and supply throughout the contract term the most recent version or release available unless otherwise specified in this ITB. All responses must include full use license rights for the term of the contract or as otherwise specified in the contract. The State will not accept or make payment for outdated software versions or releases. Responses shall include software maintenance and support services when required in the specifications.
- 1.31. **Safety of Chemical Products.** All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.
- 1.32. **Department of Revenue Registration.** Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: https://tntap.tn.gov/eservices/_/#1

- 1.33. **Prohibition of Illegal Immigrants**. Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.
- 1.34. **Inspection of Procurement File**. All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.
- 1.35. **Protest by Respondent**. Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows:
<https://www.tn.gov/generalservices/procurement.html>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

Efforts to Achieve Diversity Business Participation

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

"Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>
directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION PLAN

| | | |
|--|-------------------|--------|
| Respondent's Company Name: | | |
| Solicitation Event Name: | Event Number: | |
| Respondent's Contact Name: | Phone: () | Email: |
| Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE | | |
| Certifying Agency: | | |

Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:

| Diversity Business Information (List all subcontractors, joint-ventures, and suppliers) | % of Contract | Estimated Amount | MBE/ WBE/ SDVBE/ SBE / DSBE Designation | Currently Certified (Yes or No) |
|---|---------------|------------------|---|---------------------------------|
| Business Name: | | | | |
| Contact Name: | | | | |
| Contact Phone: | | | | |
| Business Name: | | | | |
| Contact Name: | | | | |
| Contact Phone: | | | | |

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____

Date: _____

Printed Name and Title of Signatory _____



1.36. SCOPE:

- 1.37. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

1.38. Warranty Clauses:

- 1.39. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- 1.40. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

1.41. TERM OF CONTRACT:

- 1.42. Term of Contract.
- 1.43. This Contract shall be effective on December 08, 2019 ("Effective Date") and extend for a period of Thirty six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 1.44. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 1.45. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.
- 1.46. PAYMENT TERMS AND CONDITIONS:
- 1.47. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed One Million Nine Hundred Ninety-Seven Thousand Dollars and No Cents (\$1,997,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- 1.48. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- 1.49. **Travel Compensation.** Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations."
- The Contractor must include (in addition to the other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."
- 1.50. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor shall submit invoices and necessary supporting

documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.

a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Purchase order number (assigned by the State);
5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. Total amount due for the invoice period.

b) Contractor's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

1.51. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

1.52. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.

1.53. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the

Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

- 1.54. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.
- 1.55. **MANDATORY TERMS AND CONDITIONS:**
- 1.56. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.
- 1.57. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.
- 1.58. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.
- 1.59. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- 1.60. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and

shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

Performa Software USA
Jon Stehle, Business Director
One Research Crt Suite 450
Rockville MD 20850
jon.stehle@theperformagroup.com
615-524-6190, C: 724-355-1992

State of Tennessee:

Rick Newton
Department of Finance & Administration
312 Rosa L Parks, 18th Floor, TN Tower
Nashville TN 37243
615-532-8364
rick.newton@tn.gov

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- 1.61. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
- 1.62. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- 1.63. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of

any liability to the State for any damages or claims arising under this Contract.

1.64. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

1.65. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

1.66. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

1.67. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.68. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in

writing, by submitting to the State a completed and signed copy of the document at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo--supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- 1.69. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- 1.70. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- 1.71. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 1.72. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the

Parties.

- 1.73. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.
- 1.74. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- 1.75. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- 1.76. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 1.77. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor

further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- 1.78. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- 1.79. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- 1.80. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
 - a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- 1.81. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- 1.82. **State and Federal Compliance.** The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- 1.83. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 408.
- 1.84. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.

- 1.85. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- 1.86. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 1.87. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c) any clarifications of or addenda to the Contractor's response seeking this Contract;
 - d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
 - e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
 - f) the Contractor's response seeking this Contract.
- 1.88. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- 1.89. Insurance Requirements:
- 1.90. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.
- The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may

require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

1.91. Workers' Compensation and Employer Liability Insurance.

- a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:

- b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- c) In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- d) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - 1. The Contractor employees fewer than five (5) employees;
 - 2. The Contractor is a sole proprietor;
 - 3. The Contractor is in the construction business or trades with no employees;
 - 4. The Contractor is in the coal mining industry with no employees;
 - 5. The Contractor is a state or local government; or
 - 6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

1.92. **Commercial General Liability Insurance.**

- a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

1.93. **Automobile Liability Insurance.** The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles). The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

1.94. **Professional Liability Insurance.**

- i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then;

1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- ii. Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate

1.95. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

1.96. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

1.97. SPECIAL TERMS AND CONDITIONS:

1.98. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

1.99. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

1.100. **Intellectual Property Indemnity.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State

concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

- 1.101. **Extraneous Terms and Conditions.** Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned on the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- 1.102. **Use Warranty.** Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.
- 1.103. **Software License Warranty.** Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- 1.104. **Software Support and Maintenance Warranty.** Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- 1.105. **Additional Lines, Items or Options.** At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
 - a) After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 1. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 2. Any pricing related to the new lines, items, or options;
 3. The expected effective date for the availability of the new lines, items, or options; and
 4. Any additional information requested by the State.

- b) The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c) To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d) Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

1.106. **Partial Takeover of Contract.** The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

1.107. **Unencumbered Personnel.** The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

1.108. **Survival.** The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

State of Tennessee
Sourcing Event # 31701-11237
Specifications for BIDS Licensing, BEARS Support and Development Services

A. SCOPE:

1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
2. Definitions shall be as follows or as designated and defined in the terms and conditions of the Contract.

BEARS. The term “BEARS” shall refer to the current Budget Entry, Analysis, and Reporting System application developed by the Contractor.

BIDS. The term “BIDS” shall refer to the Contractor-provided software necessary to access, run, and use BEARS, and includes any associated Contractor-provided software required by BIDS for proper operation.

CFDA. The term “CFDA” shall refer to the federal government’s Catalogue of Federal Domestic Assistance. The CFDA is a government-wide listing of all the financial and non-financial assistance programs administered by the federal government.

Cube. The term “Cube” shall refer to the multi-dimensional data sources built using SSAS.

IT infrastructure. The term “IT infrastructure shall refer to the hardware and software environment required by BIDS to operate. This includes, but is not limited to, all of the servers, networks, operating systems, database management systems, and other associated software required to support the BIDS product as installed by the Contractor.

[REDACTED] The term “[REDACTED]” shall refer to the [REDACTED] product.

Solution. The term “Solution” shall mean the software and associated automated and manual processes required to successfully operate BIDS and BEARS and any ancillary applications.

3. Goods and Services. The Contractor shall be responsible for providing the following goods and services:
 - a. BIDS licensing and maintenance:
 - i. Contractor hereby grants the State a perpetual, non-exclusive, transferable license to BIDS. The BIDS license allows for an unlimited number of BEARS users. The BIDS license also allows the State to operate additional environments, as needed, for the purposes of development, testing, and training.
 - ii. The licensing and maintenance services for BIDS includes:
 1. All Contractor manuals and other related end-user documentation that relate to BIDS user licensing.

2. All modifications to BIDS available during the Term of this Contract for general release by the Contractor including, but not limited to, updates, patches, and error corrections. All modifications presented to the State must be compliant with the State's then current IT infrastructure. Implementation of any modifications to BIDS are optional and at the discretion of the State.
 3. Contractor will respond to all maintenance service requests. Contractor and State will work together to determine whether the request falls within the scope of included maintenance services. All services which are not maintenance services or support services shall conform to the Statement of Work process.
 4. Maintenance services includes, (i) access to Contractor's online incident tracking system, the State must provide a sample of the issue and other information as requested, (ii) correction of defects in BIDS (other than those occurring as a result of circumstances referred to under excluded services), and (iii) any upgrade, update or enhancement to BIDS that occurs during the period of the maintenance services.
 5. Maintenance excluded services, (i) implementation services such as business flows, processes, configurations or installation of 3rd party components such as databases and operating systems, (ii) application optimization: analyzing, testing, or improving the performance of the Contractor's software, (iii) correction of errors or defects caused by the State's modification, revision, variation or alteration of the Contractor's software including customizations or configurations which are not part of Contractor's standard code-set (iv) correction of errors or defects of as-implemented customizations or configurations of BEARS which are outside the applicable warranty period, (iv) correction of errors caused by operator error or the failure of the State to provide suitably qualified and adequately trained operating and programming staff for the operation of the Contractor's software, and (v) investigation, diagnosis or rectification of faults not associated with the Contractor's Software.
 6. Any software, updates, patches, error corrections, documentation, or other items provided as a part of maintenance will automatically be licensed to the State under this Agreement.
- iii. The Contractor shall work with the State to coordinate a regular schedule of testing, acceptance, and implementation of periodic upgrades to BIDS.
- b. Help desk and support services for BIDS and BEARS in the production environment:
 - i. The Contractor shall provide help desk and support services for BIDS and BEARS in the production environment, via phone or email, Monday through Friday, exclusive of State holidays, during the State's regular hours of operation (8:00am-4:30pm CST). The Contractor shall respond to help desk requests promptly. The State should expect, in general, target response times for requests as follows: within 30 minutes for High priority items, 60 minutes for Medium priority items and 120 minutes for Low priority items. These services

will be provided only to system administrators of BEARS and will not be available to BEARS users.

- ii. The Contractor shall provide the necessary resources to research and resolve production environment issues.
- iii. For production environment issues caused solely and directly by BIDS or BEARS, resolution is expected within the following service delivery timelines:
 - 1. High priority items are defined as those issues where critical system functions fail without an available work-around. Users are unable to complete business functions. Resolution of these issues is expected within 24 hours of notice from the State of the item. The Contractor shall apply reasonable commercial efforts to provide an interim resolution providing a temporary work-around within this 24-hour timeframe, which shall then become a medium-priority item as defined below.
 - 2. Medium priority items are defined as those issues where critical system functions fail, but a work-around is available. Users are able to complete business functions through alternate methods. The Contractor shall apply reasonable commercial efforts to resolve medium priority items within 72 hours of notice from the State of the item.
 - 3. Low priority items are defined as those issues where non-critical system functions are presenting undesirable characteristics. Users are able to complete business functions with minimal impact to the business process. The Contractor shall resolve low priority items within ten (10) business days of notice of the State of the item.
- iv. For production environment issues not caused solely and directly by BIDS or BEARS, the Contractor shall provide reasonable support services for determining a strategy to resolve the issue. The Contractor is not obligated to any service delivery timelines in resolving production environment issues not caused solely and directly by BIDS or BEARS, and resolution of these production environment issues as consulting services will conform to the Statement of Work process.

c. BEARS application consulting and development services:

- i. Consulting services. At the State's direction, the Contractor shall provide technical resources who are qualified to provide technical and application consulting services for BIDS and BEARS. All consulting services which are not maintenance services or support services will conform to the Statement of Work process.
- ii. BEARS modifications. At the State's direction, the Contractor shall provide technical resources qualified in supporting BIDS, to develop, test, and implement modifications to existing BEARS modules. These modifications may include, but are not limited to:
 - 1. Fixes to problems that were discovered after expiration of the original BEARS warranty period,

2. Improvements to the position inventory module,
 3. Improvements to the monthly budget allocation process,
 4. Improvements to sub-allotment code budgeting functions, including budget activities and federal revenue (CFDA) tracking, and
 5. Development of new reports such as monthly budget vs. actual, position inventory, fiscal year closing, etc.
- iii. BEARS enhancements. At the State's direction, the Contractor shall provide technical resources qualified in supporting BIDS, to design, develop, test, and implement new BEARS modules. These new modules may include, but are not limited to:
1. Capital budgeting,
 2. State tax revenue estimation and tracking,
 3. Implementation of a simplified ad-hoc reporting environment (SSAS cube),
 4. Potential changes recommended by review of alternative budgeting methods,
 5. Load utility for global adjustments, and
 6. System administration and monitoring functions
- iv. The required technical resources shall include the following:
1. Project Manager / Solution Architect,
 2. Senior Designer,
 3. Senior Developer / Analyst,
 4. Developer / Analyst,
 5. Developer, and
 6. Documentation and Support.
- v. All work performed under this section will conform to the statement of work process.
- d. BEARS source code control library:
- i. The Contractor shall provide a software tool to control and manage changes to the source code required to operate BEARS. At a minimum this facility will provide the following functions:
 1. An accurate library of all application code currently in the production environment,
 2. A function to manage the process for developers to claim application code for modification and to submit application code back to the library once modifications are complete,

3. A function to link application code changes to the statement of work process, and
4. A function to provide an audit trail of changes to application code over time.

4. Statement of Work (SOW) Process:

- a. The State shall initiate the SOW process by submitting a formal request ("Service Request") to the Contractor, specifying at a minimum the following:
 - i. The date of the Service Request and a unique number to be used for tracking the request;
 - ii. A priority indicator designating the order of importance of the Service Request to the State using the following categories: Priority 1, Priority 2, and Priority 3. The Contractor shall work Priority 1 Service Requests first, followed by Priority 2, Priority 3 requests, in that order.
 - iii. A description of the problem or improvement that is being requested, and
 - iv. A desired start and completion date for the Service Request.
- b. The Contractor shall work with the State to develop a plan to service the request ("Service Plan"), specifying at a minimum the following:
 - i. A description of the proposed Solution or improvement that will be made by the Contractor, and
 - ii. Key success indicators to verify the successful completion of the Solution.
- c. Once a Service Plan is developed, the Contractor shall review and respond to the request with an estimate ("service estimate") of the resources required to service the request, specifying at a minimum the following:
 - i. An estimate of the level of person-hours by skill level and the associate hourly rate for that skill level in compliance with the hourly rates reflected in the Contract,
 - ii. An estimate of the State person-hours required to fully perform user acceptance testing of the delivered Solution,
 - iii. A projected start and completion date for the request. The projected completion date specified by the Contractor shall include time for the State to perform review and acceptance testing tasks,
 - iv. The maximum number of Contractor person hours required to perform the Service Request, and
 - v. The maximum cost for performing the Service Request. This maximum cost shall not include the cost of State resources to perform user acceptance testing. This maximum cost shall in no instance exceed the product of the person hours required multiplied by the Contract rate proposed for such work.
- d. The Contractor shall provide Service Request estimates to the State within the following timeframes:
 - i. For Priority 1 requests, the Contractor will respond within one (1) business day.

- ii. For Priority 2 and Priority 3 requests, the Contractor will respond within three (3) business days.
 - iii. For particularly complex Service Requests, the Contractor may request additional time to prepare the Service Request estimate, but under no circumstances shall Contractor be given more than fifteen (15) business days to prepare a Service Request estimate.
 - iv. During the time the Contractor is preparing the Service Request estimate, the Contractor may communicate with the State to gather additional information needed to prepare the Service Request estimate. Any delays by the State in providing additional information to the Contractor shall extend the response time for a Service Request estimate by a like amount.
- e. Once the State has received the Contractor's Service Request estimate, the State must decide within three (3) business days whether or not to accept or reject the Service Request estimate. During this time the State may communicate with the Contractor concerning any aspect of the request, plan, and estimate, during which time the Contractor may revise its Service Request estimate.
- f. If the State rejects the Service Request estimate, the State's Service Request shall be deemed to have been withdrawn unless the State requests a revised Service Request estimate. If the State approves the Service Request estimate in writing, the Contractor may begin design and development efforts to perform the Service Request. State acceptance of the Service Request estimate shall require the following levels of approval:
 - i. Minor application modifications (modifications requiring less than or equal to 80 person-hours of billable Contractor time to develop and implement) may be approved in writing by the BEARS System Administrator,
 - ii. Major application modifications (modifications requiring more than 80 person-hours of billable Contractor time to develop and implement) must be approved in writing by the Director or Assistant Director of the State's Budget Division.
 - iii. System enhancements (any new system functionality, regardless of estimated person-hours to complete) must be approved in writing by the Director or Assistant Director of the State's Budget Division.
- g. The Contractor shall track the Service Requests accepted by the State and provide a facility to communicate Service Request status on a regular basis. The State and the Contractor shall meet periodically at the discretion of both parties to review efforts toward completion of outstanding service requests.
- h. Contractor modifications and enhancements to BEARS shall conform to the State's change control process.
- i. Any delays by the State in providing any information required by the Contractor or completing State deliverables included in the Service Request, including but not limited to testing, shall extend the delivery time for a Service Request estimate by a like amount.
- j. A signed SOW by both parties is the Contractor's authorization to begin performing the Service Request. The State will not sign or accept Contractor/manufacture documents

or agreements related to a specific services engagement. The State will not accept any Contractor/manufacturer terms in a SOW.

- k. Upon completion of the agreed Service Request, the Contractor shall submit to the State all deliverables associated with the Service Request. The delivered Solution shall conform to the following service levels:
 - i. The Solution shall be delivered on time as specified by the completion date in the signed Service Request estimate.
 - ii. The delivered Solution shall satisfy all of the key success indicators in the Service Plan.
 - iii. The delivered Solution shall not cause application function failure, either to the modified or enhanced function or to other related functions elsewhere in BIDS or BEARS.
 - iv. The delivered Solution shall not introduce unanticipated performance degradation resulting in a material and measurable impact on the end users' ability to perform business functions of BIDS or BEARS in a timely fashion.
 - v. Should any of the above four (4) service levels fail to be satisfied, the State may, at its discretion, deduct five percent (5%) from the invoiced amount to reflect additional state resources required to mitigate these failures
- l. The State shall review Contractor's deliverables or services within five (5) business days and, if the deliverables or services conform to the key success indicators included in the agreed Service Plan, the State shall approve the acceptance of the deliverables or services in writing. If the State does not notify the Contractor within five (5) business days of any non-conformance, then the deliverables or services will be deemed approved. The Contractor shall invoice the State for the accepted deliverables or services upon receipt of the State's written approval.

5. Warranty:

- a. For the BIDS product, the Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services with a paid-up Maintenance agreement. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.
- b. For BEARS application deliverables, the Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of: (a) twelve (12) months after the provision and acceptance by the State of any modifications to BEARS; or (b) any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. During the Warranty Period, any nonconformance of the goods or services to the terms and conditions of this Contract or to the associated Statement of Work shall constitute a "Defect" and shall be considered "Defective." If

Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

- c. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.
- d. Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.
- e. If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

6. State Provisions:

- a. The State shall provide the following resources for each full-time Contractor personnel performing work under the terms of this contract:
 - i. One [REDACTED] account, and
 - ii. One VPN account for securely accessing project environments and project resources through the State standard VPN client.
- b. The State shall provide the necessary participation of subject matter experts as needed during the Term of this Contract.
- c. The State shall provide resource management oversight through the division of Enterprise Resource Planning ("Edison"). Resource management will include, but is not limited to:
 - i. Project oversight for major application modifications and enhancements,
 - ii. Coordination and oversight of BEARS change control process,
 - iii. Coordination and oversight of periodic release implementations of the BIDS product, and
 - iv. Coordination and oversight of the State's IT infrastructure
- d. (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

7. Other Requirements

a. Copying:

- i. Unless otherwise authorized under this agreement, the State shall not copy or reproduce BIDS by any means or in any form without Contractor's prior written consent,
- ii. The State may make a copy of BIDS for the purpose of backup and security. The State shall acknowledge such copy as the property of Contractor. The terms of this agreement shall apply to the said copy, and
- iii. The State shall not modify or alter BIDS or merge all or any part of BIDS with any other software without Contractor's written permission.

b. Reverse Engineering

- i. The State shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of BIDS.

c. Security

- i. The State shall be solely responsible for the use, supervision, management and control of BIDS, and
- ii. The State shall ensure that BIDS is protected at all times from any form of unauthorized use.

d. Customer Responsibility

- i. The State is solely responsible for selecting and using BIDS to meet the State's needs and for establishing reasonable backups, accuracy checks, and security precautions to guard against possible malfunctions, loss of data, or unauthorized access.

e. Ownership and Confidentiality

- i. As between the State and Contractor, BIDS remains Contractor's sole and exclusive property and trade secret. The State acquires neither title nor ownership rights in BIDS.